

The Honorable Robert J. Bryan

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

PAUL MICHEAL BERGIN,

Defendant.

NO. CR18-5363RJB

PLEA AGREEMENT

The United States of America, by and through Annette L. Hayes, United States Attorney for the Western District of Washington, and Matthew P. Hampton, Assistant United States Attorney for said District, PAUL MICHEAL BERGIN and his attorney, John Carpenter, enter into the following Agreement, pursuant to Federal Rule of Criminal Procedure 11(c)(1)(A), (B):

1. **Waiver of Indictment.** Defendant, having been advised of the right to be charged by Indictment, agrees to waive that right and enter a plea of guilty to the charges brought by the United States Attorney in the Superseding Information.

2. **The Charge.** Defendant, having been advised of the right to have this matter tried before a jury, agrees to waive that right and enters a plea of guilty to the following charge contained in Superseding Information:

1 a. Receipt of Child Pornography, as charged in Count 1, in violation of
2 Title 18, United States Code, Section 2252(a)(2).

3 By entering a plea of guilty, Defendant hereby waives all objections to the form of
4 the charging document. Defendant further understands that before entering his guilty
5 plea, he will be placed under oath. Any statement given by Defendant under oath may be
6 used by the United States in a prosecution for perjury or false statement.

7 3. **Elements of the Offense.** The elements of the offense or offense to which
8 Defendant is pleading guilty are as follows:

9 a. The elements of Receipt of Child Pornography, as charged in Count
10 1, in violation of Title 18, United States Code, Section 2252(a)(2), are as follows:

11 *First*, the defendant knowingly distributed/received a visual depiction in interstate
12 commerce by any means, including a computer;

13 *Second*, the production of such visual depiction involved the use of a minor
14 engaging in sexually explicit conduct;

15 *Third*, such visual depiction was of a minor engaging in sexually explicit conduct;

16 *Fourth*, the defendant knew that such visual depiction was of sexually explicit
17 conduct; and

18 *Fifth*, the defendant knew that at least one of the persons engaged in sexually
19 explicit conduct in such visual depiction was a minor.

20 4. **The Penalties.** Defendant understands that the statutory penalties
21 applicable to the offense to which he is pleading guilty are as follows:

22 a. For the offense of Receipt of Child Pornography, as charged in
23 Count 1: A maximum term of imprisonment of up not less than five (5) years nor more
24 than twenty (20) years, a fine of up to \$ \$250,000.00, a period of supervision following
25 release from prison of not less than five (5) years and up to life, a mandatory special
26 assessment of \$100.00 dollars, and a penalty assessment of \$5,000.00 unless the
27 Defendant is indigent. If a probationary sentence is imposed, the probation period can be
28

1 for up to five (5) years. Defendant agrees that the special assessment shall be paid at or
2 before the time of sentencing.

3 Defendant understands that supervised release is a period of time following
4 imprisonment during which he will be subject to certain restrictive conditions and
5 requirements. Defendant further understands that if supervised release is imposed and he
6 violates one or more of the conditions or requirements, Defendant could be returned to
7 prison for all or part of the term of supervised release that was originally imposed. This
8 could result in Defendant's serving a total term of imprisonment greater than the statutory
9 maximum stated above.

10 Defendant understands that as a part of any sentence, in addition to any term of
11 imprisonment and/or fine that is imposed, the Court may order Defendant to pay
12 restitution to any victim of the offense, as required by law.

13 Defendant further understands that a consequence of pleading guilty may include
14 the forfeiture of certain property either as a part of the sentence imposed by the Court, or
15 as a result of civil judicial or administrative process.

16 Defendant agrees that any monetary penalty the Court imposes, including the
17 special assessment, fine, costs, or restitution, is due and payable immediately and further
18 agrees to submit a completed Financial Statement of Debtor form as requested by the
19 United States Attorney's Office.

20 **5. Rights Waived by Pleading Guilty.** Defendant understands that by
21 pleading guilty, he knowingly and voluntarily waives the following rights:

- 22 a. The right to plead not guilty and to persist in a plea of not guilty;
- 23 b. The right to a speedy and public trial before a jury of his or her
24 peers;
- 25 c. The right to the effective assistance of counsel at trial, including, if
26 Defendant could not afford an attorney, the right to have the Court appoint one for him;
- 27 d. The right to be presumed innocent until guilt has been established
28 beyond a reasonable doubt at trial;

e. The right to confront and cross-examine witnesses against Defendant at trial;

f. The right to compel or subpoena witnesses to appear on his behalf at trial;

g. The right to testify or to remain silent at trial, at which trial such silence could not be used against Defendant; and

h. The right to appeal a finding of guilt or any pretrial rulings.

6. **Ultimate Sentence.** Defendant acknowledges that no one has promised or guaranteed what sentence the Court will impose.

7. **Restitution.** Defendant understands and acknowledges that he may be ordered to pay restitution to any victims of the offense to which he is pleading guilty. Defendant specifically agrees that MV is a victim of that offense and is entitled to seek restitution. Any amount of restitution ordered by the Court shall be due and payable immediately and shall be paid in accordance with a schedule of payments as proposed by the United States Probation Office and ordered by the Court.

8. **Forfeiture of Assets.** Pursuant to Title 18, United States Code, Section 2253, the Defendant agrees to forfeit to the United States immediately the Defendant's right, title, and interest in any and all property, real or personal, that was used or intended to be used to commit or to promote the commission of the offenses, and any visual depiction described in Title 18, United States Code, Sections 2251, 2251A, or 2252, or any book, magazine, periodical, film, videotape, or other matter which contains any such visual depiction, which was produced, transported, mailed, shipped or received in violation of Title 18, United States Code, Chapter 110, including but not limited to, the following assets:

a. One white Motorola cell phone seized from PAUL MICHEAL BERGIN on or about June 7, 2018.

With respect to computers, digital devices, and digital or electronic media, the Defendant agrees to forfeit the items and all files, data, and other contents of the items.

9. **Statement of Facts.** The parties agree on the following facts. Defendant admits he is guilty of the charged offense or offenses. The parties further agree that the Court may consider additional facts contained in the Presentence Report (subject to standard objections by the parties) and/or that may be presented by the United States or the Defendant at the time of sentencing, and that the factual statement contained herein is not intended to limit the facts that the parties may present to the Court at the time of Sentencing.

From November to December 2017, while at his home in Tacoma, PAUL MICHEAL BERGIN communicated with thirteen-year-old MV over the internet using Facebook Messenger. Their conversations were sexual in nature and included the exchange of sexually explicit photos and videos. BERGIN sent ~~multiple~~ ^{M/AT LEAST 10} photos and ^{AT LEAST 1} videos to MV of himself in the nude and/or in which he was masturbating. BERGIN also solicited sexually explicit photos and videos from MV. At all times, BERGIN was aware that MV was thirteen.

During their communications, BERGIN sent MV multiple messages asking that she send him photos of herself in the nude and video herself masturbating for him. BERGIN persuaded and encouraged MV to create and send him these sexually explicit photos and videos, and MV complied. For example, MV sent the following visual depictions to BERGIN at his request using Facebook Messenger:

File Name:

mg076n5moeo8oocs24122180_135172110524974_1201944561971101696_n.mp4

Transmitted: November 30, 2017 at 05:57:27 UTC

This is a color video approximately 20 seconds long. This video depicts a close up of MV's vagina, while MV appears to be sitting with her legs spread on a gray bed sheet. MV is using her right hand to masturbate.

File Name:

aag6lcx2174800c824157960_1768701049861559_2317698152557851721_n.mp4

Transmitted: December 1, 2017 at 22:11:19 UTC

This is a color video approximately 14 seconds long. This video depicts a close up of MV's vagina, and she is masturbating using the handle of a hairbrush. The

1 lower part of MV's gray shirt is visible, and she is sitting on a red blanket with her
2 legs spread.

3 **File Name:**

4 **4z7jj1kfk5s8kgwo24157496_135614597147392_8495741913339527168_n.mp4**

5 Transmitted: December 2, 2017 at 00:56:14 UTC

6 This is a color video approximately 24 seconds long. This video depicts a close-up
7 of MV's vagina, and she is masturbating using her right hand. MV is sitting on a
8 red and gray blanket and wearing a gray shirt. At the end of the video, MV pans
9 the camera up so that her face is visible.

10 BERGIN's communications with MV were intended to persuade and did in fact
11 induce her to engage in sexually explicit conduct for the purpose of producing a visual
12 depiction of that conduct. BERGIN knowingly and intentionally caused MV to produce
13 these visual depictions and received these visual depictions of MV engaged in sexually
14 explicit conduct, all of which traveled in interstate commerce.

15 10. **United States Sentencing Guidelines.** Defendant understands and
16 acknowledges that the Court must consider the sentencing range calculated under the
17 United States Sentencing Guidelines and possible departures under the Sentencing
18 Guidelines together with the other factors set forth in Title 18, United States Code,
19 Section 3553(a), including: (1) the nature and circumstances of the offense; (2) the
20 history and characteristics of the defendant; (3) the need for the sentence to reflect the
21 seriousness of the offense, to promote respect for the law, and to provide just punishment
22 for the offense; (4) the need for the sentence to afford adequate deterrence to criminal
23 conduct; (5) the need for the sentence to protect the public from further crimes of the
24 defendant; (6) the need to provide the defendant with educational and vocational training,
25 medical care, or other correctional treatment in the most effective manner; (7) the kinds
26 of sentences available; (8) the need to provide restitution to victims; and (9) the need to
27 avoid unwarranted sentence disparity among defendants involved in similar conduct who
28 have similar records. Accordingly, Defendant understands and acknowledges that:

a. The Court will determine Defendant's applicable Sentencing
Guidelines range at the time of sentencing;

b. After consideration of the Sentencing Guidelines and the factors in 18 U.S.C. 3553(a), the Court may impose any sentence authorized by law, up to the maximum term authorized by law;

c. The Court is not bound by any recommendation regarding the sentence to be imposed, or by any calculation or estimation of the Sentencing Guidelines range offered by the parties or the United States Probation Department, or by any stipulations or agreements between the parties in this Plea Agreement; and

d. Defendant may not withdraw his guilty plea solely because of the sentence imposed by the Court.

11. **Acceptance of Responsibility.** At sentencing, *if* the district court concludes Defendant qualifies for a downward adjustment acceptance for acceptance of responsibility pursuant to USSG § 3E1.1(a) and the defendant's offense level is 16 or greater, the United States will make the motion necessary to permit the district court to decrease the total offense level by three (3) levels pursuant to USSG §§ 3E1.1(a) and (b), because Defendant has assisted the United States by timely notifying the United States of his intention to plead guilty, thereby permitting the United States to avoid preparing for trial and permitting the Court to allocate its resources efficiently.

12. **Sentencing Factors.** The parties agree that the following Sentencing Guidelines provisions apply to this case and expressly agree stipulate pursuant to U.S.S.G. § 1B1.2(c) that the factual admissions contained in this Plea Agreement establish that Defendant committed an offense in violation of 18 U.S.C. § 2251(a) (Production of Child Pornography), and that U.S.S.G. § 2G2.1 governs the calculation of the offense level for that offense:

The base offense level is thirty-two (32) pursuant to U.S.S.G. § 2G2.1(a);

There is a two-level increase because MV was over the age of twelve but under the age of sixteen pursuant to U.S.S.G. § 2G2.1(b)(1)(B);

The parties agree they are free to present arguments regarding the applicability of all other provisions of the United States Sentencing Guidelines. Defendant understands,

1 | however, that at the time of sentencing, the Court is free to reject these stipulated
2 | adjustments, and is further free to apply additional downward or upward adjustments in
3 | determining Defendant's Sentencing Guidelines range.

4 | **13. Pre-Sentence Psycho-Sexual Assessment.** Defendant will submit to a sex
5 | offender evaluation/psycho-sexual assessment, which shall include polygraph testing.
6 | Defendant waives any right to confidentiality and authorizes the above-described
7 | provider conducting the psycho-sexual evaluation (and any subsequent treatment) to
8 | supply a written report(s) to the United States Probation Office, defense counsel, and
9 | government counsel. Such report(s) may be considered by the Court in determining the
10 | appropriate sentence and conditions of supervised release.

11 | **14. Registration as a Sex Offender.** The Defendant stipulates and agrees that
12 | based on the Sex Offender Registration and Notification Act, Title 42, United States
13 | Code, Section 16911 et seq., he is entering a plea of guilty to a sex offense and is a sex
14 | offender as those terms are defined in the Act. The Defendant further agrees that
15 | pursuant to the Act, he is required to register as a sex offender, and keep the registration
16 | current, in each jurisdiction where the Defendant resides, is an employee, and is a
17 | student. The Defendant further agrees that for initial registration purposes only, the
18 | Defendant is required also to register in the jurisdiction in which the Defendant is
19 | convicted if such jurisdiction is different from the jurisdiction of residence.

20 | **15. Non-Prosecution of Additional Offenses.** As part of this Plea Agreement,
21 | the United States Attorney's Office for the Western District of Washington agrees not to
22 | prosecute Defendant for any additional offenses known to it as of the time of this
23 | Agreement that are based upon evidence in its possession at this time, and that arise out
24 | of the conduct giving rise to this investigation. In this regard, Defendant recognizes the
25 | United States has agreed not to prosecute all of the criminal charges the evidence
26 | establishes were committed by Defendant solely because of the promises made by
27 | Defendant in this Agreement. Defendant agrees, however, that for purposes of preparing
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1 the Presentence Report, the United States Attorney's Office will provide the United
2 States Probation Office with evidence of all conduct committed by Defendant.

3 Defendant agrees that any charges to be dismissed before or at the time of
4 sentencing were substantially justified in light of the evidence available to the United
5 States, were not vexatious, frivolous or taken in bad faith, and do not provide Defendant
6 with a basis for any future claims under the "Hyde Amendment," Pub.L. No. 105-119
7 (1997).

8 **16. Breach, Waiver, and Post-Plea Conduct.** Defendant agrees that if
9 Defendant breaches this Plea Agreement, the United States may withdraw from this Plea
10 Agreement and Defendant may be prosecuted for all offenses for which the United States
11 has evidence. Defendant agrees not to oppose any steps taken by the United States to
12 nullify this Plea Agreement, including the filing of a motion to withdraw from the Plea
13 Agreement. Defendant also agrees that if Defendant is in breach of this Plea Agreement,
14 Defendant has waived any objection to the re-institution of any charges in the Indictment
15 that were previously dismissed or any additional charges that had not been prosecuted.

16 Defendant further understands that if, after the date of this Agreement, Defendant
17 should engage in illegal conduct, or conduct that violates any conditions of release or the
18 conditions of his confinement, (examples of which include, but are not limited to,
19 obstruction of justice, failure to appear for a court proceeding, criminal conduct while
20 pending sentencing, and false statements to law enforcement agents, the Pretrial Services
21 Officer, Probation Officer, or Court), the United States is free under this Agreement to
22 file additional charges against Defendant or to seek a sentence that takes such conduct
23 into consideration by requesting the Court to apply additional adjustments or
24 enhancements in its Sentencing Guidelines calculations in order to increase the applicable
25 advisory Guidelines range, and/or by seeking an upward departure or variance from the
26 calculated advisory Guidelines range. Under these circumstances, the United States is
27 free to seek such adjustments, enhancements, departures, and/or variances even if
28 otherwise precluded by the terms of the plea agreement.

1 **17. Waiver of Appellate Rights and Rights to Collateral Attacks.**

2 Defendant acknowledges that by entering the guilty plea(s) required by this plea
3 agreement, Defendant waives all rights to appeal from his conviction and any pretrial
4 rulings of the court. Defendant further agrees that, provided the court imposes a custodial
5 sentence that is within or below the Sentencing Guidelines range (or the statutory
6 mandatory minimum, if greater than the Guidelines range) as determined by the court at
7 the time of sentencing, Defendant waives to the full extent of the law:

8 a. Any right conferred by Title 18, United States Code, Section 3742,
9 to challenge, on direct appeal, the sentence imposed by the court, including any fine,
10 restitution order, probation or supervised release conditions, or forfeiture order (if
11 applicable); and

12 b. Any right to bring a collateral attack against the conviction and
13 sentence, including any restitution order imposed, except as it may relate to the
14 effectiveness of legal representation; and

15 This waiver does not preclude Defendant from bringing an appropriate motion
16 pursuant to 28 U.S.C. § 2241, to address the conditions of his confinement or the
17 decisions of the Bureau of Prisons regarding the execution of his sentence.

18 If Defendant breaches this Plea Agreement at any time by appealing or collaterally
19 attacking (except as to effectiveness of legal representation) the conviction or sentence in
20 any way, the United States may prosecute Defendant for any counts, including those with
21 mandatory minimum sentences, that were dismissed or not charged pursuant to this Plea
22 Agreement.

23 **18. Voluntariness of Plea.** Defendant agrees that he has entered into this Plea
24 Agreement freely and voluntarily and that no threats or promises, other than the promises
25 contained in this Plea Agreement, were made to induce Defendant to enter his plea of
26 guilty.

27 **19. Statute of Limitations.** In the event this Agreement is not accepted by the
28 Court for any reason, or Defendant has breached any of the terms of this Plea Agreement,

1 the statute of limitations shall be deemed to have been tolled from the date of the Plea
2 Agreement to: (1) thirty (30) days following the date of non-acceptance of the Plea
3 Agreement by the Court; or (2) thirty (30) days following the date on which a breach of
4 the Plea Agreement by Defendant is discovered by the United States Attorney's Office.

5 20. **Completeness of Agreement.** The United States and Defendant
6 acknowledge that these terms constitute the entire Plea Agreement between the parties.
7 This Agreement binds only the United States Attorney's Office for the Western District
8 of Washington. It does not bind any other United States Attorney's Office or any other
9 office or agency of the United States, or any state or local prosecutor.

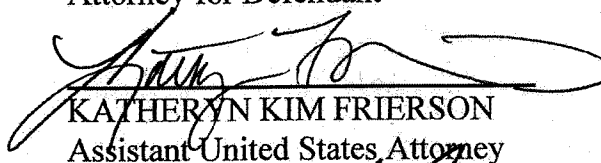
10 Dated this 6 day of SEPT, 2019.

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13 PAUL MICHEAL BERGIN
14 Defendant

15 

16 TOM WEAVER
17 Attorney for Defendant

18 

19 KATHERYN KIM FRIERSON
20 Assistant United States Attorney

21 

22 MATTHEW P. HAMPTON
23 Assistant United States Attorney